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VIRGINIA LAW REGISTER.

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THE Supreme Court of the United States, in *Swafford v. Templeton*, decided May 19, 1902, an important jurisdictional question. In a suit by a citizen of Tennessee against two election officers, for their alleged wrongful refusal to permit him to vote for a member of the House of Representatives at a national election held in the district where he resided, the Circuit Court dismissed the action upon the sole ground that it did not involve a federal question; that the declaration disclosed the infraction of no right arising under the federal laws or Constitution.

This ruling was unanimously reversed, on the ground that the right claimed to have been unlawfully invaded was one in the nature of things arising under the Constitution and laws of the United States, and that this inhered in the very substance of the claim. Citing *Wiley v. Sinkler*, 179 U. S. 58; *Ex parte Yarbrough*, 110 U. S. 655.

The court recognized the previous rulings in *New Orleans Water Works Co. v. Louisiana*, 184 U. S., and other cases, that in cases carried on error from a State court to the Supreme Court, where the federal question asserted to be contained in the record is manifestly lacking all color of merit, the writ of error should be dismissed. "But," says Mr. Justice White, "the doctrine referred to has no application to a case brought in a federal court where the very subject matter of the controversy is federal, however much wanting in merit may be the averments which it is claimed establish the violation of the federal right." Citing *Osborn v. Bank*, 9 Wheat. 817; *Texas & P. R. Co. v. Cody*, 166 U. S. 606; *Huntington v. Landley*, 176 U. S. 668.

The ruling contains food for careful thought in connection with the franchise provisions of the new Constitution of Virginia.

AMONG the recent acts of the General Assembly of this State, noticed in a synopsis elsewhere published, attention is called to an

amendment to section 1398 and kindred sections of the Code, authorizing gifts by will, of a limited amount, to churches and religious congregations. The amendment seems wise, but, as elsewhere suggested, instead of being confined to gifts for religious purposes, it should be extended to public charities generally, so that a benevolent citizen may leave his estate, in whole or in part, to any charitable purpose his philanthropy may suggest. The narrowness and viciousness of the Virginia doctrine (peculiar to Virginia and a few other States) was pointed out editorially in 3 VIRGINIA LAW REGISTER, 537.

There may be wisdom in limiting the amount of property that churches may hold, but we cannot conceive of any wise policy to be subserved by practically forbidding, as we do in Virginia, the establishment of public charities generally. This prohibition does not arise from statute. The legislature, be it said to its credit, has never shown any prejudice against such charities. But the whole difficulty comes from the decision of *Gallego v. Attorney General*, 3 Leigh, 450, and the numerous Virginia cases following it, in which the rule is laid down that the common law does not recognize the validity of public or indefinite charities, because of the *inability of courts of equity to enforce them*. Yet the courts of nearly every State of the Union do enforce them, and the citizens of these States receive invaluable benefits from such charities.

If the intelligent draughtsman of the foregoing amendment, or any other member of the legislature, desires to do his State a real service, for which future generations—and especially the lame and the halt and the blind—the old and the poor and the hungry—the sick and the deformed—the widow and the orphan—will rise up and in their misery bless him, we commend to him a comprehensive statute, establishing the validity of public charities in Virginia.

The precise legal situation in Virginia is pointed out in the editorial in our 3d volume before mentioned, and the general nature of the charitable trust will be found succinctly discussed in Bisham's *Equity*, chapter 5. Mr. Binney, in his famous argument in the Girard Will Case (*Vidal v. Girard's Ex'rs*, 2 How. 128) defined a public charity to be "whatever is given for the love of God, or for the love of your neighbor, in the catholic and universal sense—given from these motives and to these ends—free from the stain or taint of every consideration that is personal, private, or

selfish." It will be remembered that it was in this case that the validity of public charities, at the common law, was first established in America.

In *Jackson v. Phillips*, 14 Allen, 555, in which, among other things, a trust for circulating anti-slavery literature, and for the benefit of fugitive slaves, was sustained, a charitable trust was defined to be "a gift to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their minds or their hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them in establishing themselves in life, or by erecting or maintaining public buildings or works, or otherwise lessening the burdens of government."

The characteristics of the public charity are the *uncertainty of its objects* and the *perpetuity of its existence*.

The trouble in Virginia, as already mentioned, was the error into which the court confessedly fell, in *Gallego v. Attorney General*, in holding that no trust could be enforced where the beneficiaries could not be distinctly pointed out, thus making no distinction between the private and the public trust.

The difficulty has already been removed in Virginia as to trusts for *educational* and *literary* purposes—and removed, it should be observed, not by making the beneficiaries certain, but by a statutory declaration that such charities *shall be valid and shall be enforced*. And enforced they are daily in our courts. See Va. Code, sec. 1420.

The recent amendment to section 1398 sufficiently provides for *religious* trusts also.

But all other public charities are left where *Gallego v. Attorney General* placed them—that is, they are practically prohibited, unless in a particular case the legislature passes a special act legalizing the gift (and here there is always danger of interfering with vested rights), or has already legalized it by incorporations authorized to administer the particular charity. A gift by will, for example, to an incorporated hospital or orphan asylum in Virginia is valid, but not to an unincorporated one—in the latter case, not because the establishment of such hospital or asylums is contrary to public policy, but because (as held in *Gallego v. Attorney General*) the precise persons who are to be benefited by the gift cannot be brought before the court and identified. No more can there

be such identification where the gift is to a corporation with competent charter power to administer it, but in this case the legislature has validated the gift by the incorporation, and the courts find no difficulty in enforcing it.

We have thus rehearsed a good deal of elementary learning on the subject, because of our conviction that the law has been permitted to remain in its present unsatisfactory condition, not from fixed policy, but from simple failure on the part of our legislators to look into the true situation

We repeat our earnest hope that intelligent legislation may soon take away this reproach to our civilization.

If a statute is to be drawn on the subject, an excellent model will be found in Va. Code, secs. 1420 and following, where provision is made for validating and enforcing trusts for educational and literary purposes. In 3 VIRGINIA LAW REGISTER, 539, is published a copy of a recent New York statute on the same subject—passed, we believe, as the result of the failure of the trust for a great public library under the will of Samuel J. Tilden.

At the extra session of the General Assembly of Virginia, which convened July 15, 1902, the judicial circuits of the State, as apportioned by the new Constitution, were filled by the election of the following judges:

First, ...	William N. Portlock.
Second, ...	Robert R. Prentiss.
Third, ...	Robert Turnbull.
Fourth, ...	Beverley A. Hancock.
Fifth, ...	W. R. Barksdale.
Sixth, ...	George J. Hundley.
Seventh, ...	E. W. Saunders.
Eighth, ...	J. M. White.
Ninth, ...	Daniel A. Grimsley.
Tenth, ...	Beverley T. Crump.
Eleventh, ...	J. W. G. Blackstone.
Twelfth, ...	T. R. B. Wright.
Thirteenth, ...	G. Taylor Garnett.
Fourteenth, ...	Jos. H. Hubard.
Fifteenth, ...	John E. Mason.
Sixteenth, ...	Charles E. Nicol.
Seventeenth, ...	Thos. W. Harrison.

Eighteenth, . . .	S. Houston Letcher.
Nineteenth, . . .	George K. Anderson.
Twentieth, . . .	Henry E. Blair.
Twenty-first, . . .	Robert C. Jackson.
Twenty-second, . . .	W. J. Henson.
Twenty-third, . . .	F. B. Hutton.
Twenty-fourth, . . .	H. A. W. Skeen.

Many of these names are familiar to the profession as those of judges of experience and capacity, while those judges who will don the ermine for the first time are without exception worthy of the honor conferred and the trust reposed in them. We believe that we voice the sentiment of the bar of the State when we say that so far as professional attainments and judicial ability are concerned, the circuit bench of the State promises entire satisfaction.

Among the changes from the old order, we note especially that in the Tenth Circuit. After some thirty years of service, Judge Beverly Randolph Wellford, Jr., declined to be a candidate for reelection, and at the expiration of his term will retire with not only the respect, but with the love of every member of the bar. A man of fine natural parts, he has presided over the metropolitan circuit of the State for a generation, and no man will ever arise to say that any other than the purest motives and a desire to do right as he saw the right, have ever influenced one of his judgments. "*Integer vitæ, scelerisque purus*," we write of him now, not waiting for another day when his ears may not be open to the verdict of his fellows. May he, with his genial presence, long be spared to us.

Under the federal plan they treat faithful and veteran judges differently, placing a like value upon the services of the civil and military servant of the State. When we consider the appropriation of \$300,000 lately made by our General Assembly for pensions to Confederate veterans, we can but wonder that a spirit of gratitude so marked and so worthy should not have manifested itself in the late Constitutional Convention by a provision that would place our judges, after a certain length of service and after attaining a certain age, above the reach of apprehension as to whence will come, after retirement, the wherewithal which they cannot save from meagre salaries. If not given full pay, half their salaries might be guaranteed them, and because of the infrequency of the happening and the few years usually enjoyed beyond the three score and ten, the outlay to the State would be inconsiderable, and a debt of the

highest dignity would be discharged, and not a mere bounty bestowed.

Judge Wellford's successor will be Judge Beverley Tucker Crump, whose candidacy for the position was uncontested, his name, upon the suggestion of a vacancy, rising to the lips of all. Mr. Crump is a successful and well-rounded lawyer, and a recognized authority upon common law pleading. The bar of the City of Richmond will find him an already learned judge, yet nevertheless ever ready to learn, and then to give a reason for the faith that is in him.

The bar of the City of Richmond was much surprised to learn early in July of the resignation of the Honorable James C. Lamb, judge of the chancery court of that city, the resignation to take effect October 6, 1902. In the twelve years during which he has occupied the Richmond Chancellorship, Judge Lamb has acquired a State reputation for diligence, accuracy and judicial acumen. The duties of a judge may be as easy or as onerous as he elects. Judge Lamb has conscientiously practiced the aphorism, "If you want a thing done right, do it yourself; if you are indifferent about it, get some one else to do it." By his rigid inspection of the accounts of fiduciaries, and by his conservation of funds under the control of his court, he has rendered invaluable services to wards in chancery and to litigants, as to which they will never learn their indebtedness to him.

In the more inviting duties of his office, the pleading and practice in equity, and the application of its jurisprudence to cases brought before him, he has proven most acceptable to the bar and to the appellate bench, reversals of his decrees having been extremely rare. He leaves the bench with the high esteem of all who value in a judge probity, courage, industry and ability.

Judge Lamb's successor will be Judge Daniel Grinnan. Mr. Grinnan has been a member of the Richmond bar for some thirteen years, and is recognized by all his associates as well equipped for the arduous duties which will be his. He has never before been a candidate for office, but has pursued the even tenor of his professional way, familiarizing himself with the law and practice in equity, and impressing his judicial qualifications upon his associates, until, when the occasion presented itself, all felt that he was worthy. The traditions of his court are high. We do not doubt that they will be maintained by him.